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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/808,214 | 03/24/2004 | Matthew R. Cook | 10773/65 | 3931 |
| 757 | 7590 | 11/17/2006 | EXAMINER | |
| BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610 | | | ELKINS, GARY E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3782 | |

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,214

Applicant(s)

COOK ET AL.

Examiner

Gary E. Elkins

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the T shape slot as set forth in claims 23 and 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. As set forth in the specification and shown in the drawings, the slots 20 are shaped as an inverted T. No T shape is shown in the drawings.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claims 23 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation that the slots are shaped as a T as set forth in claims 23 and 25 constitutes new matter in the application. The only previous disclosure in the application is of an inverted or upside down T shape.

3. Claims 23 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to provide enablement with respect to how T shaped slots would be used within the claimed dispenser.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 20-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Strauss. Strauss discloses a container including a tab 17, 18 with a slot 15, a lid 9, a handle 12, 12 with a tab 13 which can be positioned within the slot and, with respect to claim 24, fold lines 10, 10

Art Unit: 3782

which are capable of allowing the handle to fold flat to the lid. No distinction is seen between the claimed container and that shown in Strauss as a result of the claimed intended use of the container to dispense food or for the lid to be moved between three positions, i.e. the container of Strauss is capable of holding and dispensing food and the lid is capable of being positioned in closed, partially closed and open positions.

6. Claims 20, 21 and 24, and claim 23, as best understood in view of paragraphs 1-3 above, are rejected under 35 U.S.C. 102(b) as being anticipated by either Koltz or EP '568 (figs. 6-11 emb). Each of Koltz and EP '568 discloses a container including a tab (27; upper portion of 12, respectively) with a slot (29; 32, 33, respectively), a lid (23; 8, respectively), a handle (31; 9, respectively) with a tab 26; 14, respectively) which can be positioned within the slot and, with respect to claim 24, fold lines (30; 5, respectively) which are capable of allowing the handle to fold flat to the lid. No distinction is seen between the claimed container and that shown in either Koltz or EP '568 as a result of the claimed intended use of the container to dispense food or for the lid to be moved between three positions, i.e. the container evidenced in each of Koltz and EP '568 is capable of holding and dispensing food and the lid is capable of being positioned in closed, partially closed and open positions.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3782

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Koltz or EP '568 (fig. 6-11 emb.), each in view of Strauss. Each of Koltz and EP '568 discloses all structure of the claimed container except formation of the container from corrugated board. Strauss teaches that it is known to make paperboard containers from corrugated paperboard. It would have been obvious to make the container in either Koltz or EP '568 from corrugated board as taught by Strauss to obtain the well known advantages of corrugated paperboard over standard paperboard, i.e. insulation, strength, etc.

9. Claims 1, 2, 6, 10 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss in view of Powell. Strauss discloses all structure of the claimed container except a second container within the first container. Powell teaches the well known concept of packaging smaller containers within a larger container. It would have been obvious to package a smaller container within the larger container of Strauss as taught by Powell as a mere choice of what one wishes to package within the container. The selection of one or more smaller containers as contents for a larger container is a notoriously well known concept in this art.

10. Claims 1, 2, 10, and 26, and claim 25, as best understood in view of paragraphs 1-3 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over either Koltz or EP '568 (figs. 6-11 emb), each in view of Powell. Each of Koltz and EP '568 discloses all structure of the claimed container except a second container within the first container. Powell teaches the well known concept of packaging smaller containers within a larger container. It would have been obvious to package a smaller container within the larger container of either Koltz or EP '568 as taught by Powell as a mere choice of what one wishes to package within the container.

Art Unit: 3782

The selection of one or more smaller containers as contents for a larger container is a notoriously well known concept in this art.

11. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 in either paragraph 9 or 10 above, and further in view of either Tracy or Boster. Each of modified Strauss, Koltz and EP '568 evidences all structure of the claimed dispenser except an opening within the second container cover (cls. 3, 5) or a portion of the cover that can be removed to create an opening (cl. 4). Each of Tracy and Boster teaches that it is known to make a container cover with an inner removable cap. It would have been obvious to make the cover in any one of modified Strauss, Koltz or EP '568 with an inner removable cap as taught by either Tracy or Boster to facilitate dispensing access to the contents and to prevent spilling during dispensing.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either modified Koltz or EP '568 (fig. 6-11 emb.), each in view of Strauss. Each of modified Koltz and EP '568 evidences all structure of the claimed container except formation of the container from corrugated board. Strauss teaches that it is known to make paperboard containers from corrugated paperboard. It would have been obvious to make the container in either Koltz or EP '568 from corrugated board as taught by Strauss to obtain the well known advantages of corrugated paperboard over standard paperboard, i.e. insulation, strength, etc.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in either paragraph 9 or 10 above, and further in view of Bahler. Each of modified Strauss, Koltz and EP '568 evidences all structure of the claimed container except formation of the inner container from polyethylene. Bahler teaches that it is known to provide an

Art Unit: 3782

inner packaged container made from polyethylene within an outer paperboard container. It would have been obvious to make the inner packaged container in any one of modified Strauss, Koltz or EP '568 from polyethylene as taught by Bahler since polyethylene is a cheap, readily available and easily moldable plastic material. Polyethylene is notoriously well known in the container art.

Response to Arguments

14. Applicant's arguments with respect to claims 1-7, 10 and 20-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

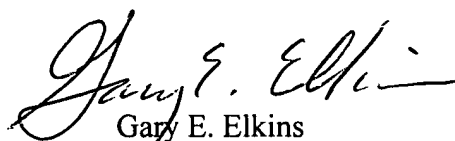
15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Application/Control Number: 10/808,214

Page 8

Art Unit: 3782

A handwritten signature in cursive script, reading "Gary E. Elkins".

Gary E. Elkins
Primary Examiner
Art Unit 3727

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13 November 2006